



**RIGA
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The right to claim for damages if one of the party located on the vessels. Jurisdiction and applicable law.

MASTER'S THESIS

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DECLARATION OF HONOUR:

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed)

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CONTEXT

1. Introduction
2. International sale of goods contract and its relation with contract for the carriage of goods by sea
 - 2.1.CIF contracts and the risk of transition
 - 2.2.FOB contracts and the risk of transition
3. The contract for the international carriage of goods by sea. Bill of Lading
 - 3.1. The carriers' rights, obligations and liability
 - 3.1.1. The ship owner or the master
 - 3.1.2. The charterer
 - 3.2. The shippers' rights, obligations and liability
 - 3.3.The B/L clause for any arbitration agreement
4. Applicable law in disputes concerning loss or damage of cargo or delay
5. Applicable jurisdiction in disputes concerning loss or damage of cargo or delay
6. Conclusion
7. Bibliography

1. Introduction.

International trade the emergence of the beginning has been known since ancient time. Merchandise or trade is the exchanging of goods between the seller and the buyer. International trade is linked to the movement of goods from one country to another site using land movement and sea-going vessels and later aircraft. Successful trade was necessary, the various rules establishing by both the state as well as their dealers. At the beginning of the relationship between the sellers and the buyers developed as a customary law which trends observed nowadays. Notwithstanding the interesting development of international trade from the historical aspect. Master's thesis will be discussed with contemporary trends in international trade and related areas such as carriage. Along with technological and scientific developments of modern life cannot be imagined without the acquisition of goods. With the development of communications habits of people are changing. They want to acquire ownership of things which they see through these new communication devices (smartphone, tablet, laptop, TV etc.). It does not mean that consumers are crucial needed these things, but because the goods have already been fashion trends. Thus, manufacturers have increased substantially the production of goods and dealers trade with these goods. Increasing in sales of goods transactions as one might expect that the disputes being considered more and more than before. As indicated above, it may be considered that the legislation follows these trends. But it not so simply how its look like. From an international aspects changes in international law is a difficult and complex process that can be lengthy years, for instance, the Rotterdam Rules (United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea)¹ which was created on 2 February 2009 but not ratified to date. Notwithstanding the foregoing in international level is enough rules which regulate maritime law and trade area involving carriage by sea transport. I will mention these specific rules in my Master's thesis.

Master's thesis, I will resolve some important thesis for parties' rights to claim for damages if other party breach the contract or agreement. This work is divided into four main sections: first part International contracts sales of goods and its relation to contracts for the

¹ United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, United Nation 2009, hereafter Rotterdam Rules not in force yet.

carriage of goods by sea; the second part the biggest emphasis will be to draw on the contracts for the carriage of goods by sea; and the third part will be concentrated to applicable law in disputes arising from loss or damage of cargo or delay; and the fourth applicable jurisdiction in disputes arising from international contracts for the carriage of goods by sea.

The first part, as is apparent from the very title will focus on international trade in goods agreement and the parties' rights and obligations. International sales contracts differences, if the goods are transported or delivered from the seller to the buyer, respectively involving the third party as the carrier. International sales of goods contracts designed incorporating Incoterms rules, as CIF, FOB etc.², concerning the transfer of goods from the seller to the buyer through the carrier. According to the contract included a clause of Incoterms will be investigated the goods alleged damage and loss risk transfer from the seller to the buyer as well as the purchase-sale agreement related party involvement in the contract of carriage as the shipper and the consignee.

The second part will be discussed for carriage by vessels and the contract of carriage the parties concerned. The main issue is concentrated to the carrier for his liability towards the owner or holder of the goods. In Maritime carriage there are large risks, as well as there is also a high probability that one of the parties who are responsible for the goods, will try to get rid of the liability using the multiple legal techniques. Depends on the carrier which can be the shipowner or charterer (time charterer, voyage charterer or bareboat charterer) will be cleared their rights and obligations. Later, through international law and case analysis, will find out their responsibility and limitation of liability to the legal consequences. And the last subpart of the second part will be discussed about the parties' rights to choose their disputes in arbitration and the introduction of such a provision in the contract of carriage or bill of lading. Advantages and disadvantages of clause for any judicial or arbitral agreement and whether that clause can change the regulations³ the rights included.

The third and the fourth part of Master's thesis of the study will be about applicable law and applicable jurisdiction in disputes arising in respect of loss of, damage to, or delay of goods

² International Chamber of Commerce, Incoterms, 2010, ICC Rules for the use Domestic and International Trade Terms (hereinafter Incoterms).

³ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligation (Rome I) and Regulation (EC) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast Brussels I).

covered by a contract of carriage or for the breach of international sale of goods contract. Discussion for these two parts and another part of Master's thesis will highlight the Latvian and European context, covering the Baltic Sea region and reference to international and national law.

2. International sale of goods contract and its relation with the contract of carriage of goods by sea.

International sale of goods contract is not unusual or very specific legal module which consists only in international trade. Trade or sale of the goods most of the world countries are similar. International contract of sales the goods is transported from one country to another from a seller to a buyer who is not from one country or is situated in different states. In this Master's thesis will not be considered an international sale of goods between individuals but between legal entities. The international sale of goods is regulated by various international laws which, as domestic laws, often change with amendments, additions, modifications and cancellations or replacement. In international level often changes are not possible because there are too many international players in this area with their national institutions. Each national authority takes a decision in its own way in accordance with its national constitutional law in its interaction with the international law. One of the most important and widely applicable international regulatory act in international trade of goods is United Nation Convention on Contracts for the International Sale of Goods (hereafter CISG)⁴. The most important objective of the CISG is to provide a modern, unified and fair international sales agreement⁵. There is no doubt that the CISG plays an important role in international trade and has incorporated in its convention legal and regulatory provisions which facilitate the parties to the transaction (a seller and a buyer) enter into the contracts for the sale of goods without the presence of lawyers. The rules of the CISG provide the parties with the basic elements as an exchange of offer and acceptance or obligations of the parties to the contract or remedies for breach of the contract and etc. for establishing international sale of goods contract⁶. Without going into the CISG because it could direct the goal set in the

⁴ United Nation Convention on Contracts for the International Sale of Goods. United Nation, adopted 11 April 1980 Vienna, entry into force 1 January 1988.

⁵ United Nation Commission on International Trade law. Accessed September 13, 2017
http://www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG.html

⁶ Supra note 4 Part III of CISG.

Master's thesis in this chapter international sale of goods contract relation with the contract of carriage of goods by sea. As I mentioned before the CISG provides an insight and modular platform for the creation of international sale of goods contract. That does not mean that this type of contract must be in writing or written evidence of its existence⁷.

Accordance with international sale of goods contract the seller has a duty to sell and transfer his goods to the buyer and the buyer has a duty to pay and receive these items. In each contract, the parties must have an obligation, rights and responsibilities and of course the subject of the contract itself as well as the conditions of performance. In the international sale of goods, one of the integral elements is the shipment of goods from the seller to the buyer, from the seller's country to the buyer's country. The transferring of the goods usually used different transport method by road, sea and air. In this context, international sale of goods contracts needs to include the conditions for the shipment of goods. Within the framework of the Master's thesis hereafter will be considered the shipping of goods by sea. Returning to the above mentioned the terms of the international sale of goods contract must include the shipment of goods involving the carriage of goods by vessel(s). This in turn means that, in order to deliver the goods from the seller to the buyer, it is necessary to conclude an additional contract with the carrier. Thereby, a new relationship must be established between the seller and the buyer in relation to the terms of the contract of the carriage where the carries play the main role. Thus, there is a dilemma, what contract should be concluded with the carrier and whether could it be included in a sales contract as a separate clause, or a separate contract, or only a reference to its existence as well as how the seller's and the buyer's legal relationship would change under such conditions. This Master's thesis is intended to solve this problem and with the existing legal means and relevant regulatory enactments to achieve a simplified way of establishing legal relations between the various parties involved in the international trade of goods involving the carriage of goods by sea. Parties to the sale contract may be included soft law as Incoterms 2010 rules⁸. The inclusion of the Incoterms rule in the sales contract helps the parties to determine the conditions of the contract of carriage and the risk of switching from seller to the buyer. When the goods were delivered and the risk passed to the buyer, then he is not entitled to sue the seller for any damage caused while the goods

⁷ Supra note 4 Article 11 of CISG *A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.*

⁸ Supra note 2.

are being transported⁹. Therefore, the terms of the sale agreement cannot cover all risks of damage to the goods if it is transferred from the seller to the buyer by including the carrier. Whereas two parties participate in a purchase agreement, then include a third party, which is not related to the transfer of goods from the seller to the buyer, is impossible without the conclusion of a separate service contract as a contract of carriage of the goods. Only a contract for the carriage of goods may confer on the carrier the right to receive reimbursement for the carriage of the goods from the shipper to the consignee. In a contract of carriage of goods are usually two parties – the shipper (who might be either the seller or the buyer) and the carrier. For the person who transports the goods known as the consignee¹⁰.

The main thesis presented in the Master's Thesis is who has the right to claim damages if one of the related parties are located on the vessel. Consequently, we will concentrate in the future on the movement of goods by sea from the sender to the consignee. This does not mean that the seller's or buyer's legal relationship arising from the contract for the sale of goods will not be affected, but in its turn, will not affect the conformity of the goods with a contract of sales. In accordance with the Incoterms terms, the sales contract may include several rules for the shipment of goods as CIF (Cost, Insurance and Freight) and FOB (Free on Board)¹¹.

2.1. CIF contracts and the risk of transition.

In accordance with the CIF rules in the trade contract, the seller is responsible for the conclusion of the contract of carriage and contract of insurance. Thereby, the seller obtains unilateral right to conclude the contract as the shipper or the consignor with the carrier. The CIF contract or CIF rules included in sales of goods contract is a set of multilateral agreements contained in one contract where the seller and the buyer plays a key role. It might seem that under the CIF agreement, the seller has more duties and, consequently, responsibility. However, the Incoterms make these rights equal in their rules. Thus, none of the party has any advantages. The seller has an obligation to enter into an agreement with the carrier under a condition that is acceptable to the seller, but this does not mean that they may be acceptable to the buyer. In the international transaction the parties are mostly from different legal systems. Thus, one legal

⁹ Furmstom Michael and Chuah Jason, *Commercial Law*, Pearson, Second Edition, 2015, p.253.

¹⁰ Supra note 9 p.253.

¹¹ Supra note 2, Classification of the Incoterms 2010 rules.

system is normal practice in the other would not be in line with legal traditions. From this point of view, in the CIF contract, the seller has certain advantages in concluding a contract for the carriage of goods with the carrier in favor of the buyer. Incoterms 2010 stipulates that the contract of carriage must be concluded on the usual conditions as adopted in maritime transport. "The contract of carriage must be made on usual terms at the seller's expenses and provided for carriage by the usual route in a vessel of the type normally used for the transport of the type of goods sold."¹² In this regard, the seller may include such clauses in the contract of carriage which would be contrary to the buyer's interests if he would have to turn against the carrier for failure to fulfill his obligations or improper performance. Under CIF contracts, the carrier has certain advantages in drawing up a transport contract of carriage firstly he has more experience in transportation and knows various specific factors which could be turned against him, secondly as the seller is interested in getting cash faster for the goods and, therefore, the mere fact that the relevant contracts have been concluded and the goods are loaded on board and transferred to the master is sufficient, whereby the seller is not so interested to go into the contract of carriage because it does not affect his interests. Along with the mentioned activities, the risk and ownership of the goods are transferred from the seller to the buyer. "The property in the goods under a CIF sale will normally pass when the shipping documents are handed over in exchange for the purchase price."¹³ The shipping documents are included without the above mentioned such as the bill of lading, the commercial invoice and the insurance policy. In that regard, the buyer when receiving that kind of documents accordance with the CIF contract have rights to dispose of the goods, although the goods themselves have not yet been received because they are in transit at the stage. "Because the documents are such a key feature of the CIF contract, it might be said that a CIF contracts is a 'two-tier' contract: a sale of the documents as well as sale of the goods."¹⁴ In CIF contracts, it is sometimes possible that the buyer refuses to accept the goods because they are damaged and do not comply with the purchase sale agreement then the ownership of the goods will go back to the seller. In that effect, it is necessary to distinguish between the cause and the time of occurrence of the damage. There could be various scenarios that would give the buyer the rights either not to accept the goods, or to accept the goods, and to bring an action against the

¹² Supra note 2, Article A3(a), p.110.

¹³ Supra note 9, p.277.

¹⁴ Supra p.277.

seller or the carrier. If the goods do not comply with the purchase agreement because it is damaged at the stage of manufacture, then refuse to accept such goods from the buyer's side accordance of Section II. Conformity of the goods and third party claims of the CISG. From the other side if the goods are damaged in transporting period from the seller to the buyer. Thus it is necessary to determine the moment of transfer of the risk when the responsibility for the goods passes from the seller to the buyer. Incoterms rules provide for risk transfer arrangements CIF terms section A5 (The sellers bear all risks of loss of or damage to the goods until they have been delivered in accordance with A4 – placing the goods on board the vessel or by procuring the goods so delivered) and section B5 (The buyer bears all risks of loss of or damage to the goods from the time they have been delivered as envisaged in A4 – the goods are placed on board of the vessel and received from the carrier at the named port of destination)¹⁵. Thereby, if the goods are placed on board, then the seller no longer has power over the goods and he cannot influence the proper conservation of them, because it has been transferred to the carrier's disposal, unless the particularity of the goods requires special packaging or specific stowage on the board of the vessel or the seller knew or ought to have known that the goods had already been damaged and he did not inform the buyer about this. When the buyer receives the clean bill of lading and pay for the goods he bears the risk of the damage to the goods and may lodged a claim against the insurance for the goods, or to file a claim against the carrier on the basis of the contract of carriage or bill of lading¹⁶. Article 67 of CISG stipulate passing the risk when the sales contract involves carriage of the goods

“If the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place.”¹⁷

Under the CIF contract, the seller is obliged to enter into an insurance contract which covers the buyer's risk loss of or damage the goods during the carriage. “The seller must obtain, at its expense, cargo insurance complying at least with the minimum cover provided by Clauses

¹⁵ Supra note 2 Incoterms 2010 p.110-113.

¹⁶ Supra note 9, p.283.

¹⁷ Supra nota 4, Article 67 (1.)

of the Institute Cargo Clause or any similar clauses.”¹⁸ If the seller wants more insurance coverage for the goods, then it must be purchased by the CIF contract itself and on its own funds. The period covered by the insurance corresponds to the passing of risk from the seller to the buyer is similar as mentioned before to the transition of ownership of goods from the seller to the buyer. If the goods are damaged or lost during transportation, the buyer has the right to turn either against the carrier or to claim compensation for loss from the insurer of the cargo. If the buyer, however, chooses to receive insurance, then the insurer has the right to take action against the carrier, because accordance with an insurance contract the insurer is the successor to the buyer or the beneficiary. With the acquisition of such rights, the insurer comes to the buyer’s place does not obtain all the right provided for in the contract of carriage, but only to claim reimbursement of the value of the goods. When entering into a contract for the carriage of goods the insurer does not have any rights because he is not a party to this transaction. Only under certain circumstances, which may take the form of loss of or damage to the goods during transport, the insurer obtains the right as the consignee of the goods with partial claim rights. The insurer has not rights claim to remuneration for lost profit its rights belong to the consignee.

Nowadays, CIF clause in the sale of goods contracts are the most popular. However, buyers often choose for other shipping conditions by sea transport in which the buyer can save on transportation costs. They thus opt for FOB contract clauses.

2.2. FOB contracts and the risk of transition.

In accordance with the FOB clause (free on board) the seller supplies the goods on board indicated by the buyer at the designated port of shipment. Similar to the CIF contract the seller delivers the goods and placed them on the board of the vessel. If, in the case of a CIF contract accordance with Incoterms 2010, the goods are transferred to the carrier, then in the FOB contract the goods are handed over at the disposal of the buyer. Unlike the CIF contract, the seller is not obliged to insure the carriage of goods it rests on the shoulders of the buyer. “[T]he seller must provide the buyer, at the buyer’s request, risk, and expense (if any), with information that the buyer needs for obtaining insurance.”¹⁹ The seller may enter into an insurance contract on behalf

¹⁸ Supra note 2, Incoterms 2010 p.110.

¹⁹ Supra note 2, Incoterms 2010, FOB A3(b), p.88.

of the buyer if requested by the buyer himself, but upon occurrence of the insured event the buyer may suffer losses due to the unpaid or partially paid amount because he has not participated in drafting an insurance contract. Under the Incoterms 2010 rules B3(b) the buyer has no obligation to make a contract of insurance. Thereby, all the risks which may arise in relation to the goods are borne by the buyer. Thus, it is beneficial for the buyer to conclude an insurance contract, because otherwise, under certain circumstance the buyer himself will cover all losses incurred on the goods.

The FOB contracts are divided into several variants, usually the two most important are highlighted, but in the legal literature there are found three – the ‘classic’ FOB, and the ‘extended’ FOB²⁰ or the ‘strict’ FOB.²¹ The classic FOB contract the seller stowage the goods on board a vessel nominated by the buyer. In this situation the buyer has no obligation to make a contract of carriage. The buyer receives all necessary documents (sales contract or additional information on the goods for weight, volume and type of packaging etc.) from the seller or his representative conclude an agreement with the carrier. Proof that the goods are loaded on the vessel is issued by the carrier, or master's or charter party with an appropriate bill of lading where the buyer nominated as the consignor (the shipper) and the consignee (the receiver of the goods). The formal risk transfer from the seller to the buyer takes place with the bill of lading passed on to the buyer. The previous Incoterms version 2000 and earlier the risk had transferred from the seller to the buyer on the time in which the goods pass the ship's rail at the named port of shipment.²² If the previous Incoterms version was much dispute over it who is responsible for damage of cargo when it is loaded then this issue has now been resolved in Incoterms 2010. Unlike CIF contracts in FOB contracts the buyer has to provide for the time and place of loading on a vessel and the necessary loading capacity and space on a shipboard. If the buyer does not provide the above conditions the seller according the section A5 and B5 of the Incoterms 2010 after the goods have been delivered in accordance with A4, is released from the risk of loss of the goods. Then, the buyer bears all

²⁰ The Passing of Risk A comparison between the passing of risk under the CISG and German law, © Annemieke Romein, Heidelberg, June 1999, Chapter 2 Incoterms, Accessed September 13, 2017, <http://www.cisg.law.pace.edu/cisg/biblio/romein.html>.

²¹ Supra note 9 Furmstom M. and Chuah J., p.287.

²² Supra note 20, Chapter 2, Incoterms.

risks of loss of or damage to the goods.²³ General obligation of the buyer in the classic FOB and others FOB he must pay the price of the goods and the carriage costs.

The extended FOB contract include additional services in which at the buyer's request, the seller on behalf of the buyer may contract for on usual terms at the buyer's risk and expense in this respect he acts as the shipper.²⁴ The use of the extended FOB contracts has its advantages and disadvantages. The benefits of such contracts are that that the seller himself organizes the conditions for the carriage of goods. The seller, acting on behalf of the buyer, supplies the goods on the specified date and place of loading on board, because he himself has previously reserved it. Similar to the classic FOB contracts, the identification of the goods and the transfer of risks to the buyer occurs at the same time as the goods are delivered. This applies to the extended FOB contract as well.²⁵ The other advantage is that the seller operates in his own territory and it is easier and more comprehensible for him to understand local customs and legislation as well as local peculiarities in document administration or management. Disadvantages of the extended FOB contracts are that the buyer does not participate in the negotiation of a contract of carriage. Therefore, specific contract terms would not be included for the buyer's. The other disadvantage is that if the ship does not arrive at the designated place of loading, then the risk of loss of or damage to the goods lies with the buyer, since the seller, in accordance with Incoterms 2010 rules, delivered the goods to the designated place. Accordance with the section 116 of Maritime Code²⁶ stipulates that the shipper must deliver the goods at the place and time determined by the carrier. Thus, in accordance with the Marine Code in the territory of Latvia if the ship does not arrive at the designated place of loading, the buyer is entitled to take action against the carrier. Despite the aforementioned shortcomings, many buyers nevertheless choose to include FOB clauses in their purchase agreement. International regulation such as Incoterms 2010 or United Nations Convention on Contracts for the International Sale of Goods, or Rotterdam Rules, or Hague Visby Rules, Hamburg Rules²⁷ and etc., facilitates the conclusion of contracts for the international sale of goods, which include the carriage of goods by sea. The CIF and FOB contract clauses directly and implicitly specify which party must conclude a contract for the carriage of goods. While

²³ Supra note 2, Incoterms 2010 p.91.

²⁴ Supra note 2, section A3 of Incoterms 2010 p.88.

²⁵ Supra note 22, A.Romein, II. Extended FOB contract.

²⁶ Maritime Code (Jūras Kodekss) entered into force 01.08.2003.

²⁷ United Nations Convention on the Carriage of Goods by Sea 1978, Hamburg Rules.

someone has to look at a contract for the carriage of goods and whether it is a bill of lading, it will be discussed below. What kind of contract for the carriage of goods should look like and whether it is a bill of lading, it will be discussed below?

3. The contract for the international carriage of goods by sea. Bill of Lading.

What is the 'contract of carriage' by sea in international meaning. This issue has been many and widely debated in many legal systems. From the classical law point of view, the carrier delivers goods from one place to another, in return for payment to the customer. Such a similar terminology is included in two United Nations Conventions as Rotterdam Rules and Hamburg Rules "Contract of carriage by sea means any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another."²⁸ On the other hand, another International Convention, such as the Hague-Visby Rules, to which Latvia has acceded, stipulates that "Contract of carriage applies only to contract of carriage covered by bill of lading..."²⁹ The provisions of the Hague Visby are originally intended as a compromise between ship owners and cargo owners, the Rules have operated largely for the benefit of the carrier, at the expenses of cargo interests. As a result, the shipper is often at a disadvantage vis-à-vis the carrier in relation to claims for damages. Bill of Lading plays a very important role in the transport of goods by sea. Does this mean that bill of lading is the same contract of carriage? Bill of lading is not the contract of carriage, but document which contains evidences a contract of carriage by sea³⁰. The contract of carriage is closely linked to the bill of lading, but it cannot be a separate transport contract, although it contains many of the inherent details of the contract. The bill of lading is equivalent to the transport consignment note or the receipt, but that is not the case because it contains the terms of the contract of the carriage the goods. The contract of carriage is a mutual agreement between the two parties on the transfer of goods from one port to the other. "The contract itself is formed by mutual exchange of promises between the shipper and the carrier."³¹ In turn, the bill of lading is a proof that the goods have been received and will be shipped to the appropriate port according to the

²⁸ Supra note 27, article 1(6).

²⁹ International Convention for the Unification of Certain Rules of Law Relating to Bill of Lading, Hague-Visby Rules, 1968, article 1(b).

³⁰ Supra note 27, article 1(7).

³¹ Supra note 9 Furmston M. and Chuah J., p.255.

contract of carriage. Before entering into a transport transaction the parties to the transaction (the shipper and the carrier) discuss all the necessary details which will be included in contract of carriage. In the negotiation process agreement is reached on the place on board and the freight price as well as the conditions of carriage and other important conditions such as liability and dispute settlement. The contract of carriage is usually concluded between the consignor and the carrier in favor for the consignee, who in this contract is not a party to the transaction and even a third person (CIF contracts). Then what rights are obtained by the consignee if something happens to the goods at the stage of transportation. Under the CIF agreement the shipper has fulfilled his obligations with the carrier for the delivery of the goods on a board of the ship and has paid for the freight. The recipient of the goods, of course, has rights which obtained with a property right document such as a bill of lading to bring an action against the carrier for loss or damage to the goods. If the bill of lading is not a contract of carriage, as already mentioned above, does this mean that the bill of lading is the document of takeover of the shipper's right. In order to assume such a right, the shipper must assign this right to the consignee with the assignment agreement. If no such assignment agreement exists, the recipient of the goods in the event of a dispute cannot rely on terms of the contract of carriage. Thus, the consignee does not have any rights and obligations arising from the contract of carriage. Therefore, the carrier can be exempted from certain obligations expressed in the contract of carriage and issue a bill of lading signed to the consignor, which includes more favorable provisions for the carrier such as limiting liability based only on relevant international regulations (Hague Rules, Hague-Visby Rules, Hamburg Rules, etc.). Article 15 paragraph 1 of the Hamburg Rules stipulates that the bill of lading must include at minimum the part of the terms of the contract of carriage agreed between the consignor and the carrier. Consequently, accordance with the Hamburg Rules the carrier does not have the full discretion to include in his bill of lading more favorable conditions for himself. Article 152 (1) and (2) of the Latvian Maritime Code contain similar parts of the bill of lading as in the Hamburg Rules. The Hamburg Rules

“strike a fairer balance between carriers and shippers in the allocation of risks, rights and obligations with regard of liability, ... improve the limit of liability, solve the question of the unit limitation value of packages stowed in containers, make certain the carrier’s right to unit limitation for the torts of his employees, ... solve the question of on deck cargo, ... strengthen the carrier’s fire exemption and remove the nautical faults defence... [and] shift

the balance of the liability slightly from the shipper to the carrier, but without radically changing the established liability system.”³²

Accordance with article 112 (3) of the Latvian Maritime Code ‘the mutual legal relations between a carrier, consignor and consignee of cargo shall be determined by a bill of lading...’³³ According to that provision, the bill of lading could be regarded as an independent contract from the contract of carriage. But in the second sentence of paragraph 3 of this article the legislator has indicated that ‘the conditions of a contract of carriage by sea which are not referred to in the bill of lading’³⁴, Thereby, the bill of lading could be regarded as reflection in written form of the contract of carriage.

The contract for the carriage of goods includes such terms of contract as dispute resolution options in which the parties (the shipper and the carrier) reached an agreement on the applicable jurisdiction, the applicable law, or the arbitration agreement. According to the Hamburg Rules, the bill of lading should not include such clause as applicable jurisdiction or applicable law, or even arbitration agreement. Thus, the carrier in order to obtain a contract of carriage was willing to agree on one of the terms of the contract, but to issue a bill of lading to others terms. Considering such injustice to the consignee, the Hamburg Rules offers a solution to disputes in Article 21 (Jurisdiction) and Article 22 (Arbitration). In the Latvian Maritime Code, this is similarly expressed in Article 163 Jurisdiction of Claims.

On the other side as soon as the consignee received the bill of lading, he become the owner of the goods. Thus, if the goods are loss of or damaged at the time of transport and the carriage agreement was in effect then loss would suffer the owner of the goods which is the consignee accordingly. From this point of view, the consignee as a third party may bring an action against the carrier for failure to fulfill its obligations under the contract for the carriage of goods. The Ardennes case [1951] 1KB 55³⁵ where the plaintiff (the consignee) submitted a claim against the carrier regarding a breach of the contract of carriage containing a condition not to deviate from the

³² Sze Ping-fat, *Carrier's liability under The Hague, Hague-Visby and Hamburg Rules*, Hague; London; New York: Kluwer Law International, 2002, Chapter VIII, quote from another source: UNCTAD *The Economic and Commercial Implications of the Entry into Force of the Hamburg Rules and the Multimodal Transport Convention* (TD/B/C.4/315/Rev.1) (United Nations New York 1991) paras 17&26.

³³ Supra note 26, Maritime Code, Art.112(3).

³⁴ Above 33, Maritime Code.

³⁵ The Ardennes case [1951] 1 KB 55, In the High Court of Justice King's Bench Division, before Lord Goddard C.J. 1950, mentioned above note 9 Furmstom M. and Chuah J., p.255.

road, but the bill of lading such a clause was not included. In Lord Goddard C.J. “opinion, for that reason, prevented from giving evidence that there was in fact a contract entered into before the bill of lading was signed different from that which is found in the bill of lading or containing some additional term.”³⁶ Consequently, the bill of lading could be equated with a contract of carriage when it is put in the hands of a consignee. ³⁷ I believe that the bill of lading cannot be a contract of carriage, but this could give the right to enter into this contract as a third party with all existing rights not to exclude the right of the carrier to act against the consignor on the basis of the carriage contract. The bill of lading is usually considered to be a document of property right and when the seller has circulated it, it may be assumed, that the seller intends to transfer the goods property to the recipient of the bill of lading. Under the Hamburg Rules and the above considerations Bill of lading is a document which evidence a contract of carriage by sea and the taking over of the goods by the carrier, and by which carrier undertakes to deliver the goods against surrender of the document. ³⁸ Bill of lading is not just a written proof of the existence of transport contracts, but a much more complicated document that includes itself in addition to the one already mentioned such as the receipt of goods, negotiable document, condition of the goods, identification of the cargo, quantity or weight of the goods. In accordance with English law, bill of lading is not just a document for receipt of goods by the carrier pursuant to the contract of the carriage, but “a document whose assignment transfers the rights and obligations under the contract of carriage and also the title to the goods which are subject to those terms.”³⁹ If the transferee has the same conditions as the assignee, then, in the transport transactions, the consignee of the goods could indirectly turn against to himself by submitting a claim. The consignee submits a claim against the carrier and the carrier, based on the contract of carriage, lodge a claim against the consignor or his successor in title which is actually the consignee. Such uncertainty should not be. Thus, the bill of lading could not be part of the assignment contract. Another approach to this issue is specified in

³⁶ Above note 33, Accessed October 17, 2017, http://www.lawandsea.net/List_of_Cases/A/Ardennes_The_1951_1_KB_55.html.

³⁷ Supra note 9 Furmstom M. and Chuah J., p.254.

³⁸ Supra note 27, Hamburg Rules, article 1(7).

³⁹ Judgment of the Court of 19 June 1984, Case C-71/83, Partenreederei ms. Tilly Russ and Ernest Russ v NV Haven- & Vervoerbedrijf Nova and NV Goeminne Hout. Brussels Convention of 27 September 1968 - Article 17 - Jurisdiction clause in a bill of lading. Reference for a preliminary ruling: Hof van Cassatie - Belgium. Accessed August 19, 2017, <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-71/83&td=ALL>.

the Carriage of Goods by Sea Act 1992⁴⁰. If the person becomes the lawful holder bill of lading, in accordance with the contract of carriage, he shall have all the claim rights as if he had been a party to this contract.⁴¹ I consider that the bill of lading grants it to the bearer a partial right to the contract of carriage, for instance, the recipient of the goods only acquires its rights from the contract of carriage when the property and/or risks to the goods are transferred to the consignee in accordance with CIF contracts.

Bill of lading is the carrier's written notice to the shipper about the condition of the cargo after loading on board. Pursuant to Article 15 (1)(b) of the Hamburg Rules bill of lading is to be indicated 'apparent condition of the goods'. However, it is not always possible to determine the appearance of the products due to their specific packaging, such that the goods are packed and not obvious, the goods are transported in sea containers. The carrier, who draws up a bill of lading, identifies the apparent condition of the goods in view of their general nature could be cumbersome without specialist knowledge of the product and its appropriate packaging or mode of transport. As an example, various natural fruit juices, varietal wines, other foods, as well as specialist chemicals and etc. Consequently, the carrier relies only on the information provided by the shipper about the product and its carriage peculiarities. He is not obliged, and it is also not possible to check each package, especially if it is in a container.

"If the bill of lading contains particulars the general nature, ... of the goods which the carrier ... issuing the bill of lading on his behalf knows or have reasonable grounds to suspect do not accurately represent the goods actually taken over or, where a 'shipped' bill of lading is issued, loaded, or if he had no reasonable means of checking such particulars, the carrier or such other person must insert in the bill of lading a reservation specifying these inaccuracies, grounds of suspicion or the absence of reasonable means of checking."⁴²

Therefore, this does not mean that the carrier is completely exempted from the obligation to check the cargo on or immediately after loading. He is deemed to have noted on the bill of lading that the goods were in apparent good condition. By checking the cargo, the carrier or his authorized

⁴⁰ Carriage of Goods by Sea Act 1992, an Act to replace the Bill of Lading Act 1855 with new provision with respect to bills of lading and certain other shipping documents, 16 July 1992, Accessed September 22, 2017, <https://www.legislation.gov.uk/ukpga/1992/50/contents>.

⁴¹ Above 38, Section 2(1).

⁴² Supra note 27, Hamburg Rules, article 16(1).

person guided by his previous experience, *prima facie* evidence,⁴³ general knowledge of the goods and the information provided by the shipper. The carrier is aware if the appearance of the goods does not correspond to the information provided by the shipper in writing, then the responsibility for the non-compliance should be borne by the shipper. The external condition of the goods before loading the ship and then thereafter must remain constant. The proof of this is the bill of lading issued by the carrier which reflects the conformity of the goods with the contract of carriage. If the carrier carries out his duties with due diligence, then he is not obliged to check the conformity of all goods with the marking or description submitted by the sender.

“Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.”⁴⁴

In accordance with the international contract carriage of goods by sea the carrier plays the main role. Therefore, it is worthwhile to mention the carrier duties and rights.

3.1. The carriers' rights, obligations and liability.

The carrier's role in international transport is one-sided, because neither the consignor nor the consignee or the seller and the buyer can not affect the integrity of the goods in the transport process. The carrier is entrusted with goods other than his property, so they must be treated with them with the utmost care. A carrier shall be liable for cargo from the time when it is loaded on to the ship until it is unloaded. The consignor or the consignee of the goods cannot directly affect the preservation of the goods during the transportation, but can regulate the legal relationship by concluding an appropriate contract. If the carrier has extensive experience in the field of transport, then the shipper or the consignee in the FOB contracts might not have such experience. Therefore, international regulatory enactments governing the carriage defines the obligations, responsibilities and rights of the carrier, thus helping the shipper as the weakest party.

⁴³ Note 37, Hamburg Rules, article 16(3).

⁴⁴ Supra note 29, Hague-Visby Rules, article 3(2)(c).

First of all, before starting to analyze the carrier's duties and responsibilities, it is necessary to find out exactly who the carrier is. Accordance with Article 1 (a) of The Hague-Visby Rules “Carrier” includes the owner or the charter who enters into a contract of carriage with the shipper.⁴⁵ While The Hamburg Rules stipulate that “Carrier” means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper.⁴⁶ The Latvian Sea Code does not precisely specify who the carrier is, but according with other articles it is highlighted as shipowner and the charterer.⁴⁷ The Rotterdam Rules designate the carrier, quite simply as a person that enters into a contract of carriage with a shipper.⁴⁸ Mostly above mentioned and other normative acts highlight two types of carriers which are the shipowners and the charterers. For each one will be discussed further. The international rules do not separate extract the carrier's type of liability. Accordingly, the claimant may bring an action against the carrier with whom the contract of carriage has been concluded, not against the person who actually carries out the transport (“actual carrier”⁴⁹) with which the shipper has no direct connection.

In the carriage of goods, the contract should clearly identify the carrier's obligations and liability for failure to fulfill its obligations. Nevertheless, in contracts should not include too much non-enforceable conditions for the carrier, as they would be contrary to the existing United Nations Conventions and national law. As I mentioned before, the carrier is responsible for keeping the goods in their original condition throughout the transport period from the time he has taken over the goods from the shipper or his authorized person acting on his behalf until the time the carrier has delivered the goods to the consignee or the bearer of bill of lading. In some cases, goods could have been received and passed through the appropriate public authorities accordance to law or regulations at the ports of loading and discharge.⁵⁰ Not all goods can be preserved in their original condition, for instance, when transporting the fruits (bananas, citrus, etc.) or steel products that, under the influence of the weather, overlap with the rust layer if they have not been suitably treated. According to the contract of carriage, the carrier's obligation takes place even before the voyage itself. The carrier is responsible for the vessel is seaworthy, it will be managed by appropriate

⁴⁵ Supra note 29, Hague-Visby Rules, Art.1(a).

⁴⁶ Supra note 27, Hamburg Rules, Art.1(1).

⁴⁷ Supra note 26, Maritime Code, Art.112(4).

⁴⁸ Supra note 1, Rotterdam Rules, Art.1(5).

⁴⁹ Supra note 27, Hamburg Rules, Art.1(2).

⁵⁰ Supra note 27, Hamburg Rules, Art.4(2).

people (the master and the crew), it is properly equipped and supplied.⁵¹ Could be considered that ‘whenever a vessel sails with less crew or officers than is the usual (and reasonable) custom in the trade, or less crew than the ship's own certificate requires, the ship is unseaworthy for that voyage’.⁵² This issue would be debatable, because only under certain circumstances, which could cause loss or damage to the cargo or delay, it would be necessary to involve all crew members who are able to prevent the cause of the occurrence and do not cause dangerous consequences. “Make and keep the holds and all other parts of the ship in which the goods are carried, and any containers supplied by the carrier in or upon which the goods are carried, fit and safe for their reception, carriage and preservation.”⁵³ These requirements for the seaworthiness of the vessel should be maintained not only at the time of loading, but throughout the voyage up to the time of unloading. If the carrier exercise due diligence ensures the seaworthiness of the vessel and its adequate crew, then he may be released from liability for loss or damage to the goods if this was due to damage to the ship. “Due diligence” is not merely what ship owners usually do but is what a reasonably prudent ship owner would do with respect to the vessel at issue in the particular circumstances of the case.’⁵⁴ At the same time, questions may arise about the seaworthiness of the vessel and the performance of the navigation and other electronic equipment which, according to some circumstances, may incorrectly indicate the road leading to a collision or strike on the ground. In this case, the crew of the ship was fit for their qualification and the ship's equipment was operating properly before and after the event occur. Temporary disruptions caused the equipment to fail. Under Article 4 (1) of The Hague-Visby Rules determines that neither the carrier nor the ship shall be liable for the loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence from the carrier.⁵⁵ The above example is not included in the case of *force majeure* expressed in Article 4 (2) of The Hague - Visby Rules not in Article 17(3) of the Rotterdam Rules. Thus, if it is not possible to prove the truth, the carrier and the ship are to be released from liability under Article 4 (2)(a) of The Hague - Visby Rules (“Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.”⁵⁶). In this

⁵¹ Supra note 29, Hague-Visby Rules, Art.3(1)(a)(b).

⁵² Brian T.Neylor, THE ELEMENTS OF THE BURDEN OF PROOF UNDER THE CARRIAGE OF GOODS BY SEA ACT, 12 Colum. J. Transnat'l L. 289, 1973, p.304.

⁵³ Supra note 1, Rotterdam Rules, Art.14(1)(c).

⁵⁴ Bernard H.Oxman. The International Journal of Marine and Coastal Law. 1996., p.7.

⁵⁵ Supra note 29, Hague-Visby Rules, Art.4(1).

⁵⁶ Supra note 29, Hague-Visby Rules, Art.4(2)(a).

case the carrier or the shipowner are released from the liability for loss caused to the fault of the master or the ship crew. Pursuant to Article 57(1) of the Latvian Maritime Code "...[a] shipowner shall be liable for loss caused due to the fault of the master, crew, pilot and other persons in his or her service in the performance of their work duties in connection with the relevant ship."⁵⁷ Some national laws are much more demanding against the carrier's liability as international law. In accordance with the Latvian Marine Code, the plaintiff may lodge a maritime claim⁵⁸ against the shipowner as well as against bareboat charterer or time or voyage charterer for loss or damage to cargo as well as other claims, requesting arrest of the ship.⁵⁹ In another situation, the carrier is liable for the delay in delivery of the goods due to the carrier's fault and this occurred while the goods were transported from the port of loading to the point of unloading. In this case based on Article 5 (3) of the Hamburg Rules the claimant (the shipper or the consignee it is depends from carriage contract) is entitled to bring an action against the carrier for the loss of goods if it has not been delivered in accordance with the contract of carriage within 60 days from the last day of delivery.⁶⁰ Thus, the loss of goods or delayed delivery is equivalent to the loss that the buyer or the consignee of the goods might suffer. A rule of law such as a delay in delivery of goods assimilated to the loss of goods is to be assessed in favor of the consignee, because in many cases the goods are seasonal or fashionable and if they were not delivered at the time the buyer would suffer losses not only in the form of lost profits but also in the cost of goods. A classic example is *Heskell v Continental Express Ltd*,⁶¹ where the plaintiff turned against the shipper for non-delivered goods on the basis of a bill of lading. Accordingly, the shipper filed a claim against the warehouse broker for failure to carry out the plaintiff's instructions to deliver the goods for shipment to a certain wharf. The brokers have been carelessly issuing the bill of lading for the goods. An action brought by the plaintiff against the defendants claiming damages for breach of contract and negligence in failing to ship the goods to the consignee. The King's Bench Division Court held:

⁵⁷ Supra note 26, Maritime Code, Art.57(1).

⁵⁸ Supra note 26, Maritime Code, Art.48, Maritime Claims.

⁵⁹ Supra note 26, Maritime Code, Art.50, Right to Arrest a Ship.

⁶⁰ Supra note 27, Hamburg Rules, Art.5(3).

⁶¹ Case *Heskell v Continental Express Ltd*, King's Bench Division, 03 April 1950, Accessed 25 October, 2017, westlaw.co.uk.

“(1) the loading brokers were not under any contractual duty to return the bill of lading if the goods were not shipped; (2) the careless issuing of an invalid bill of lading was not a breach of any general duty to the public to see that it was valid, ...; ... (4) for the loading brokers' breach of warranty the damages would be what the plaintiff had suffered from not being able to sue the shipowners ...; (5) in the absence of a contract of carriage the bill of lading was a nullity, ...; (6) as the failure to make a contract of carriage had caused the plaintiff's liability to the Persian firm, for which failure the shipowners could not be responsible, the plaintiff would have had no remedy against the shipowners in respect of the issue of the bill of lading (and so had no remedy against the loading brokers); ... (8) however, the detention of the goods by the warehouseman and his failure to inform the plaintiff of their whereabouts was a continuing breach of duty; (9) the issue of the bill of lading could not extinguish the warehouseman's breach of duty as a causative event; the breach being continuing was a continuing source of damage; and the warehouseman was responsible in law for the damage which the plaintiff sustained by the fall in value of the goods over the material period; (10) however, the warehouseman as a carrier was not liable in damages for the loss of profit sustained by the Persian firm on their sub-sales.”⁶²

That court decision is used as a precedent in several court rulings up to the present day, because it explains quite precisely the situation about and around the bill of lading, as well as the obligations and responsibilities of the shipper and the carrier.

The main obligation of the carrier under the contract of carriage is to deliver the goods from one port to the other, crossing the sea by a vessel. In order to fulfill such an obligation, the carrier not only ensures the vessel's seaworthiness, but also finds an appropriate suitable crew and a master of the ship. If it is clear about the shipper of the goods, then the carrier is like an institute in which there are a number of people (the crew) who do not directly carry the carriage themselves, but provide the possibility of the carriage process. Regardless of the duties of each member of the crew, the responsibility for the deliver lies solely with the carrier, whether it be the shipowner or the charter party. Thus, in the future we will continue to analyze only the carrier as such and partly the charter party and the master of the vessel.

⁶² Supra note 54, Case Heskell v Continental Express Ltd.

In some national laws, a party to the claim may claim compensation for all losses, including the loss of profits, from the defendant. Such claim for reimbursement is a normal legal practice, but its amount may exceed the value of the goods several times. Thus, in order to prevent the defendant from losing all his property, international law and, in particular, the maritime law provide for limitation of liability. Many laws, including the Latvian Maritime Code, provide for limitation of liability for the loss of goods or other claims in respect of loss of life or personal injury or damage to property (including damage to harbour works, basins and waterways and aids to navigation) or claims in respect of other loss resulting from unlawful acts, occurring on board or directly related to the operation of the vessel and consequential loss resulting therefrom.⁶³

One part of this Master Thesis will focus on limiting the liability of the carrier for goods and their transportation. As can be seen from the above, then, in accordance with the Latvian Maritime Code, a carrier may only reduce its liability in cases where goods are lost or damaged. In turn the Hamburg Rules also provide for that the carrier's liability be limited even in cases of delay in the delivery of goods neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability.⁶⁴ However, the Hague Visby Rules does not explicitly state the basis for liability limitation solely determined “Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to...”⁶⁵ Inclusion of limitation of liability in legislation encourages the development of trade at the international level. Thereby not allowing the claimant to benefit from the loss or damage of the goods caused by the carrier's fault. Whereas the carrier must not use the liability limitation clause in order to avoid liability for intentional irregularity resulting from deliberate acts of the carrier, negligence or inaction. Article 8 of The Hamburg Rules stipulate strictly what actions cannot be taken to benefit from limitation of liability “an act or omission of the carrier done with the intent to cause loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.”⁶⁶ Article 67 of the Latvian Maritime Code stipulates that the carrier is not allowed to use limitation of liability ‘if it is proven that the loss was caused due to action or inaction by this person, the purpose of which was to cause such loss, or this person, being aware of the probability of such loss, nevertheless

⁶³ Supra note 26, Maritime Code, Art.66(1)(1) and (3), Claims Subject to Limitation of Liability.

⁶⁴ Supra note 27, Hamburg Rules, Art.6(1)(b).

⁶⁵ Supra note 29, Hague-Visby Rules, Art.5(a).

⁶⁶ Supra note 27, Hamburg Rules Art.8(1).

acted negligently'.⁶⁷ The liability limitation clause must be in the balance between the defendant's and the plaintiff's rights, responsibilities and obligations. In maritime claims in accordance with The Hague Visby Rules or The Hamburg Rules or the Latvian Maritime Code provides that the owner of a vessel may limit his liability to a specified amount in respect of the claims. Each of the mentioned regulatory enactments shall calculate the minimum limiting value according to their own methods. The Latvian Maritime Code is calculated on the tonnage unit of the vessel. Hamburg Rules are calculated by weight of goods or units of goods which 'is limited to an amount equivalent to 835 units of account per package or other shipping unit or 2.5 units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher'.⁶⁸ But according to The Hague Visby Rules, the reimbursable minimum value is determined at '10 000 francs per package or unit or 30 francs per kilo of gross weight of the goods lost or damaged, which is the higher'.⁶⁹ In turn, the Rotterdam Rules, like The Hague Visby Rules, set the minimum reimbursement value 'to 875 units of account per package or other shipping unit, or 3 units of account per kilogram of the gross weight of the goods,...., whichever amount is the higher,...'.⁷⁰ On the day of the dispute settlement, the unit of account is converted into the State currency on the basis of International Monetary Fund.⁷¹ The shipper and the carrier may agree and include in the contract of carriage other units which impose a limitation of liability, but it cannot be less than that which is stipulated in international law or national law. Since the right to claim is acquired by a third party (the consignee of the goods) and thus cannot restrict his right to a possible remuneration through contractual restrictions. Accordance with the Article 73 of the Latvian Maritime Code If an action is brought against a shipowner in court, the shipowner has the right to limit his liability by creating a Liability Restriction Fund.⁷² The fund, which has been established in this way should be used solely for the satisfaction of those claims to which limitation of liability may be applied.⁷³ Creation of a Liability Restriction Fund does not constitute an admission of liability.

The fundamental principle of a limitation of liability, incorporated into international and national law as well as in contracts, is to ensure the continuous operation of the carrier in

⁶⁷ Supra note 26, Maritime Code, Art.67, Actions regarding which Limitation of Liability not Allowed.

⁶⁸ Supra note 27, Hamburg Rules, Art.6(1)(a).

⁶⁹ Supra note 29, Hague-Visby Rules, Art.5(a).

⁷⁰ Supra note 1, Rotterdam Rules, Art.59(1), Limits of liability.

⁷¹ Supra note 1, Rotterdam Rules, Art.59(3).

⁷² Supra note 26, Maritime Code, Art.73, Precondition for Limitation of Liability.

⁷³ Above 65, Art.74.

the field of transport without engaging in infinite judicial processes which could lead to a bankruptcy of the carrier. The consent of the parties to the provisions of this principle does not prevent the plaintiff from appealing to the court for further claims from the carrier. In Case C-39/02⁷⁴, the applicant (Mærsk Olie & Gas A/S) claimed damages of USD 1.7 million and GBP 51 961 from the defendant (Firma M. de Haan en W. de Boer). The defendant established a liability limitation fund in accordance with the International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships of 10 October 1957 and the Arrondissementsrechtbank (District Court) Groningen (Netherlands) ‘made and order provisionally fixing that limitation at NLG 52 417.40 and enjoining the shipowners to lodge that sum together with NLG 10 000 to cover the legal costs’.⁷⁵ In accordance with this Convention, the amount of damages by the claimant was rejected. Although, in Case C-39/02, there was no contractual relationship between the applicant and the defendant, the judgment of that court is applicable in the contract of carriage, with regard to limitation of liability.

If the case has event occurred that the goods are loss of or damaged, the parties to the shipment may use a limitation of liability clause without requiring an admission of liability. The carrier is usually not interested in exercising limitation rights, as this could lose not only the existing contractual relationship, but also not obtain new orders. Therefore, in many transport contracts, the carrier agrees to include a higher limit on the loss or damage of the goods than is provided for by international or national laws and regulations.

The carrier’s rights, or they are just right to reimbursement for carriage or, moreover, more. Indeed, the carrier is entitled to reimbursement in accordance with the contract of carriage and the corresponding regulatory enactments that provide it. To be remunerated, the carrier must fulfill and comply with the terms of the contract. In order to fulfill the terms of the contract, the carrier has the right to request from the shipper that he fulfills the obligatory obligations arising from the contract of carriage. Therefore, the carrier has the right to the appropriate packaging of the goods, which will not be damaged during the transportation. Secondly, to receive the relevant information of the goods (nature, weight, quantity and etc.)

⁷⁴Case -39/02, Judgment of the Court (Third Chamber) of 14 October 2004, Mærsk Olie & Gas A/S v Firma M. de Haan en W. de Boer, Reference for a preliminary ruling: Højesteret - Denmark. Accessed October 30, 2017, <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-39/02&td=ALL>.

⁷⁵ Above 69, Case-39/02, paragraph 20.

in order to compare with loaded goods and issue an appropriate the bill of lading. The carrier has the right to withdraw from the contract, if the shipper did not deliver the goods to the carrier within a specified time period and the delay significantly hinders the fulfilment of the contract terms.⁷⁶ As previously mentioned, the carrier is entitled to a payment for the freight. If the cargo is delivered to the bill of lading, the consignee upon receipt of the cargo becomes liable for the payment of the goods. If, in this case, the carriage of cargo is not paid, then the carrier is entitled in accordance with the Latvian Maritime Code, to detain the cargo or place it in the warehouse, setting a time limit for payment. And if, however, the bill of lading holder or beneficiary does not make a payment, then the carrier has the right to sell the warehoused cargo in such amount as necessary in order to cover the costs of sale, to be able to receive freight and satisfy other claims.⁷⁷ Other international regulations such as The Hague Visby Rules, The Rotterdam Rules, The Hamburg Rules, or the COGSA do not specify a broader description of the rights of the carrier as expressed in the Latvian Maritime Code. In transactions where the freight is paid by the consignee of the goods or the bill of lading holder, the basic document on the basis of which the carrier requests payment is the bill of lading. Thus, the regulatory framework for international transport transits has been highlighted, which should include a bill of lading. For instance, the paragraph 1(k) of The Hamburg Rules stipulated “The bill of lading must include, *inter alia*, the following particulars: the freight to extent payable by the consignee or other indication that freight payable by him.”⁷⁸ From this point of view, where the bill of lading contains a clause for the freight charge, it could be considered that the bill of lading on this issue is a separate contract or part of the contract of carriage.

As I mentioned before, the carrier is as an institute or organization composed of several operating persons with separate tasks and one common purpose to deliver goods from one port to another. The next sub-head will focus on the role of the shipowner and the master of the vessel during the shipment process.

⁷⁶ Supra note 26, Maritime Code, Art.122(2), Duty to Pay Freight in Case of Non-performance of the Carriage Contract.

⁷⁷ Above 74, art.130-132.

⁷⁸Supra note 27, Hamburg Rules, Art.15(1)(k).

3.1.1. The shipowner or the master.

International legal acts, such as The Hamburg Rules, Hague-Visby Rules or The Rotterdam Rules or COGSA do not specifically or directly regulate the rights and obligations of the shipowner or the master of the ship. In its turn, the Latvian Maritime Code has devoted it enough attention. As it is already understood from the name itself, the owner of a ship is a person who owns a ship which provides goods for carriage by sea. Thus, some of the conditions that which the carrier must provide under international rules are directly attributable to the shipowner and of course the vessel itself. For example, the shipowner must ensure the seaworthiness of the vessel and its suitability for the proper transport of the cargo with the condition that he controls and manage the vessel himself. In return, the master of the vessel provides the ship's management and is responsible for loading, unloading and preserving the cargo during carriage. The master of a ship is a person who has received the corresponding education and skills and also compliance with the requirements of the regulatory enactments and with which the shipowner has entered into an employment contract. Master of a ship is a representative of a shipowner in the vessel and shall be the ship's representative at court.⁷⁹ Thus, both the master of the vessel and the shipowner are closely interrelated not only with the employment contract, but also with full confidence in the master. The owner of a ship depends on the master's behavior in dealing with his property, because due to the wrongful act or omission of the master of the vessel, the plaintiff could, as appropriate, compromise the shipowner's rights to the ship. When take over a ship to a master, the ship owner does not engage in the direct maintenance and provision of the vessel with everything necessary, since all this is under the control of the master. Before each the voyage begins, the master of the vessel shall take the necessary measures to ensure the maritime navigation and readiness of the ship, including inspection of the ship's hull, machinery and equipment, recruitment of crew, provision of the ship with food, bunker and water, and the readiness of the ship for the receiving, carriage and preservation of cargo. The master of a ship shall ascertain that the cargo is properly loaded, secured and protected, the vessel is not overloaded, its stability and the shell's durability are satisfactory.⁸⁰ As can be seen from the foregoing, the duties of the master

⁷⁹ Supra note 26, Maritime Code, Art.274(2)(9) Master of a Ship.

⁸⁰ Above 79, Article 275(1), General Duties of a Master of a Ship when Commencing a Voyage.

of the vessel shall cover all the duties which fall within the competence of the carrier. Thus, if the master of the ship is fit for his competence, the carrier can rely on the master and conclude carriage contracts without worrying about the failure to fulfill his obligations. In accordance with the first paragraph of Article 282 of the Latvian Maritime the master of a ship is not personally liable for obligations that he has entered into on behalf of the ship or the owner of the goods.⁸¹ In turn, Article 57 of the Latvian Maritime Code states that the shipowner is liable for damage caused by the master in the performance of his work duties in connection with the relevant ship.⁸² The captain's responsibility for loss or damage to the cargo is solely to the shipowner. In this case, the master may limit his liability for loss or damage to a cargo not exceeding the amount of his two monthly salaries, except if his activity or inaction was aimed at such consequences, or he was aware of and allowed such effects to occur.⁸³ In any case, the limitation on the liability of the master of a ship is not a reason to carry out his duties casually, since the owner of the vessel may cancel the employment contract due to lack of confidence in the master or to find another reason. Thus, we found out that the master of the ship is not a carrier indicated in the contract of carriage, but a leading employee who provides cargo transportation on behalf of the shipowner or employer. The international rules for the carriage of goods by sea are designed in such a way that the plaintiff can sue the respondent who is a carrier, but not to looking for the culprit, which caused damage to the goods. So the shipowner himself is interested in finding the cause of the offense that caused the loss or damage to the goods. And if the reason for this was the master's act or omission, then, when assessing the circumstances, with the requirement to turn against the responsible person or not.

“In marked contrast to the carrier's exemption from liability for the negligent acts of his servants in the navigation or management of the ship, the obligation of the carrier to act with due diligence in making the ship seaworthy extends to the acts of all the employees of the shipowner, within the scope of their respective duties.”⁸⁴

Despite the fact that the master of the vessel or the crews under his responsibility has caused loss or damage to the cargo through his activity or inaction, the responsibility must nevertheless

⁸¹ Supra note 26, Maritime Code, Art.282(1), Liability of a Master of a Ship for Loss.

⁸² Above 81, Article 57(1), Liability of the shipowner.

⁸³ Supra note 26, Maritime Code, Art.282(2), Liability of a Master of a Ship for Loss.

⁸⁴ Supra note 52, Brian T.Naylor, p.305.

be taken by the shipowner if he is the carrier. However, the shipowner is not always the direct carrier, since in the case of leasing the ship with the crew he becomes the actual carrier⁸⁵, but the carrier's obligations under the contract of carriage are performed by the charter party.

3.1.2. The charterer

A charterer plays a big role today in sea freight transportation. First of all, it should be clarified who is the charterer. First of all, it should be clarified who is the charterer and, secondly, its connection with the carriage of goods by sea. The charterer is the person who has signed the ship lease or voyage agreement. This contract is concluded between the shipowner and the merchant with which the ship is hired or leased for the carriage of goods on a specified voyage or for a specified period. Although the time charterer and the voyage charterer are by their nature similar, however, their difference is sufficiently large in the legal sense. A time charterer takes over the vessel for a certain amount of time and otherwise it is called the demise or bareboat charter. In a voyage charter, the charterer hires the ship for a single voyage, and the shipowner provides the master, crew, loading place on board and delivery to a specified port. Accordance with Latvian Maritime Code a bareboat agreement is the contract between the shipowner and the time-charter party regarding the transferring of the actual possession of the ship to the time-charterer for the period specified in this agreement, during which the ship has parallel registration in Latvia and abroad.⁸⁶ In the case of an agreement on time charter, the shipowner still manages the vessel, but the charterer gives orders for the use of the ship and the ship can be sub chartered as a time charter or voyage chartering. Not always, the charterer gives orders to the shipowner's crew and at the appropriate bareboat agreement, the time charterer can hire his crew and the master of the ship. The Latvian Maritime Code are not applicable in case of a charterer agreement if goods are carriage by a vessel, except if a bill of lading is issued in accordance with a charter contract and if it regulates the legal relations between the carrier and the holder of the bill of lading, then the relevant rules for the bill of lading may apply.⁸⁷ The Hamburg Rules apply to the charter party

⁸⁵ Supra note 27, Hamburg Rules, Article 1(2) "Actual carrier" means any person to whom the performance of the carriage of the goods, or of part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted.

⁸⁶ Supra note 26, Maritime Code, Art.13(1) Bareboat Charter Agreement and Ship Management Agreement.

⁸⁷ Supra note 26, Maritime Code, Art.114, Carriage of Cargo where Charter Contract Entered into.

if it issues a bill of lading and is not the holder of this bill of lading.⁸⁸ For example, if, in the case of a charter agreement, the consignor is the owner of the cargo, and also the recipient who leases the vessel transports the goods to a port of his destination. The carrier in this case is the charter party itself and in the event of the loss or damage of the goods would suffer the charter itself. If the charter contract is concluded for the carriage of goods to third parties who are the consignor (FOB contracts) and the consignee (CIF contracts), then the charter party acts as a carrier and to which the above-mentioned international transport regulations apply.

In the contracts for the carriage of goods, the other dominant party is the consignor the relevant activity of which may affect the arrival of the goods at the destination of the consignee.

3.2. The shippers' rights, obligations and liability

Unlike the consignee, the shipper is directly involved in the conclusion of the carriage contract in favor of the consignee. The consignor and the consignee of goods are usually directly linked to a sales contract where the parties are the seller and the buyer of the goods respectively. But indirectly, a contract for the carriage of goods in which the carrier of the goods is involved. Consequently, the shipper must establish appropriate obligations in relation to the conclusion of the transport contract. Of course, may enter into a clause in the purchase contract regarding for the conclusion of the contract of carriage, but it should create a whole section that would make it more difficult to conclude the purchase agreement itself. International law, such as The Hague Visby Rules, the Hamburg Rules, or even the Rotterdam Rules, therefore incorporates the rights and obligations of the shipper with regard to the carriage of goods. Main responsibility of the shipper is to ensure the timely arrival of the goods at the port at the time of loading the vessel. If the goods do not arrive in a timely manner, the carrier's responsibility for delaying the ship is transferred to the consignor who also reimburses the carrier's expenses which arose due to delay in the delivery of the goods from the shipper. Cargo is delivered in such a way that it can be loaded, transported and unloaded conveniently and safely⁸⁹. One of the most important responsibilities of the shipper is to provide the carrier with the relevant documents and markings on the goods, their weight, quantity and the correct storage at the time of shipment. The shipper must reimburse the loss

⁸⁸ Supra note 27, Hamburg Rules, Art.2(3).

⁸⁹ Supra note 26, Maritime Code, Art.116, Delivery of Cargo Done by the Consignor.

incurred by the carrier for the supply of inaccurate information concerning the goods.⁹⁰ “The shipper must mark or label in a suitable manner dangerous goods as dangerous.”⁹¹ If, however, the sender has not shown the dangers of the goods in an appropriate manner, regardless of the damage to the goods themselves, the shipper may be liable for damage caused by the destruction of other goods and / or damage to the ship or its equipment. With the transfer of goods, the carrier's behavior, the shipper is entitled to receive on request a basic bill of lading proving the fact that the goods are properly loaded on board to the consignee. Such a bill of lading gives the shipper, if he is also a seller, to receive payment for the goods provided that the bill of lading has been properly transferred to the beneficiary or the bank which issued the letter of credit. In any case, the shipper is liable for damage caused by the goods during the entire carriage, if, at the bill of lading issue, the carrier could not see the goods inaccuracies with the information provided by the shipper, because the goods had a hidden defect.

3.3. The B/L clause for any arbitration agreement

Before considering which arbitration agreement clauses may be included in the contract for the carriage of goods, it should be clarified what constitutes an Arbitration agreement. United Nations Commission on International Trade Law (hereafter UNCITRAL) gave its explanation in the UNCITRAL Model Law on International Commercial Arbitration (hereafter UNCITRAL Model Law), which is an Arbitration agreement. It is an agreement between the parties to submit to arbitration certain or all disputes which arise or may arise between them in relation to the legal relationship established, whether contractual or not contractual. The arbitration agreement may be in the form of an arbitration clause in a contract or a separate agreement form.⁹² As we see from the definition itself, the arbitration agreement is a mutual agreement between the parties, a dispute that may arise during the carriage of goods, may be submitted to the arbitral tribunal. Whereas the bill of lading, from the above, is a written proof of the existence of a contract of carriage between the consignor and the carrier. The issuing of the bill of lading by the carrier who signs it alone.

⁹⁰ Supra note 27, Hamburg Rules, Art.17(1) Guarantees by the shipper.

⁹¹ Above 90, Hamburg Rules, Art.13 (1) Special rules on dangerous goods.

⁹² UNCITRAL Model Law on International Commercial Arbitration. As adopted by the United Nations Commission on International Trade Law on 21 June 1985, and as amended by the United Nations Commission on International Trade Law on 7 July 2006), Article 7.

Accordance with the Article 7(2) of the UNCITRAL Model Law “The arbitration agreement shall be in writing”⁹³ and it is in writing if its contents are recorded in any form or would it be an arbitration agreement or contract concluded orally, by conduct, or by other means.⁹⁴ An obligatory part of an arbitration agreement is explicit consent of the parties. The bill of lading does not have such explicit consent from the other party. Therefore, an arbitration clause cannot be effective without an agreement in writing or confirmation in writing of an agreement between the parties to the transfer of the dispute to the arbitral tribunal. This view is also expressly provided for in Article 22 of the Hamburg Rules if the parties can prove in writing that any dispute which might arise in connection with the carriage of goods under this Convention shall be submitted to arbitration.⁹⁵ A contract for the carriage of goods may be expressed in either in writing and orally or otherwise, the acting parties are the carrier and the consignor. If the written contract of carriage has a clearly defined dispute settlement procedure in the arbitration tribunal, then the clause contained in the bill of lading is not matter much. This is subject to the condition that the dispute will be resolved between the carrier and the shipper. Notwithstanding the fact that the carrier and the consignor have agreed in writing on an arbitration agreement, such an agreement should also be from the consignee party and exactly in written form. Bill of Lading is also a document confirming the transfer of ownership of goods as well as the transfer of rights due under the contract of carriage. Thus, the arbitration agreement clause written in the bill of lading must be signed both by the carrier and by the recipient, in such a way that the parties are aware of the legal consequences choosing a dispute settlement in arbitration. In case C-71/83

“The Belgian limited company NV Goeminne Hout, bought a quantity of wood from an American firm. German shipowner Partenreederei ms Tilly Russ was commissioned to carry the goods by sea from Toronto to Antwerp. The sea carriage was covered by bills of lading... When the cargo was unloaded at Antwerp, two lots were damaged and 10 planks were missing. ...Goeminne Hout ... claimed 304 US dollars by way of damage, in proceedings before the Rechtbank van Koophandel [Commercial Court], Antwerp. Partenreederei ms Tilly Russ... objected to the jurisdiction of the Antwerp court

⁹³ Above, Art.7(2).

⁹⁴ Above, Art 7(3).

⁹⁵ Supra note 27, Hamburg Rules, Art.22(1) Arbitration.

on the ground that the following clause appeared on the back of each of the bills of lading:
"... Any dispute arising under this bill of lading shall be decided by the Hamburg court." ⁹⁶

In that case, jurisdiction was challenged and the case should be dealt with by the Hamburg court on the basis of the jurisdiction clause contained in the bill of lading. Although the case concerns a jurisdiction clause contained in the bill of lading, the lessons and opinions expressed by the European Court of Justice would be directly applicable to the arbitration agreement clause included in the bill of lading. The opinion of the Commission of the European Communities (hereinafter – the Commission) expressed in this case is similar to that prescribed by the UNCITRAL Model Law, for instance:

“Thus it is necessary to apply the principles formulated by the Court in *Segoura and Salotti*. Pointing out that in almost all cases the shipper is not aware of the conditions contained in the bill of lading at the time when the contract of carriage is concluded, the Commission contends that under those circumstances the jurisdiction clause is not valid under Article 17 unless it has been expressly accepted in writing by the shipper. In practice, the shipper rarely signs the bill of lading and in any event did not do so in this case.”⁹⁷

Could therefore agree with the Commission's view in Case C-71/83 that the consignor was not informed of the terms contained in the bill of lading. In applying this view and taking into account the UNCITRAL Model Law (Article 7) the arbitration agreement clause must be highlighted in the bill of lading and certainly signed by both part the carrier and the consignor or unambiguous written evidence of the views expressed by the parties. The arbitration clause must be so expressed in such a way if the contract of carriage is challenged in order to make it invalid, the arbitration agreement must remain in force unless the arbitration agreement is contested. “An arbitration clause which forms part of the contract shall be treated as an agreement independent of the other terms of the contract.”⁹⁸

⁹⁶ Case C-71/83, Judgment of the Court of 19 June 1984., *Partenreederei ms. Tilly Russ and Ernest Russ v NV Haven- & Vervoerbedrijf Nova and NV Goeminne Hout.*, Reference for a preliminary ruling: Hof van Cassatie - Belgium. Brussels Convention of 27 September 1968 - Article 17 - Jurisdiction clause in a bill of lading. Accessed May 16, 2017, <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-71/83&td=ALL>.

⁹⁷ Above C-71/83, p 9.

⁹⁸ Supra note 92, Art.16(1) competence of arbitral tribunal to rule on its jurisdiction.

With the above mentioned arbitration clause included in the bill of lading, should be included as a separate agreement with clear and unbiased parties' views and wishes, expressed in writing in such a way that the assignee of the bill of lading will have all the rights and obligations which are due to the shipper.

4. Applicable law in disputes concerning loss or damage of cargo or delay

Transportation of goods by sea in the international arena is regulated by several international legal acts, as well as national legislation, where applicable. What law to choose and apply to loss or damage to the cargo or its delay depends on the choice of the parties expressed in the contract of carriage or the law governing the applicable law. In order to choose the applicable law, parties need to firmly understand the difference between procedural rules and substantive rules.⁹⁹ As regards procedural issues, the *lex fori* principle must be respected (the rules of the country in which the court is situated).¹⁰⁰ In its turn, as regards the substantive law, the principle of choice of parties has a dominant preference over mandatory rules. "A contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by terms of the contract or circumstances of the case."¹⁰¹ The choice of agreement is based on the mutual intention to choose the applicable law, which is granted to the court, which in its turn find it difficult to justify the absence of such a legally binding agreement.¹⁰² The choice of the law applicable to the settlement of disputes is based on the Rome I Regulation¹⁰³ if one of the parties to the transaction is established in, or closely related with, a Member State. The Rome I Regulation replaced the previous Convention on the law applicable to contractual obligation (Rome Convention).¹⁰⁴ The basis of the Rome Convention, which is also consolidated in the Rome I Regulation, is to establish uniform rules applicable in situations when events occur in another country where there are two

⁹⁹ Thor Falkanger, Hans Jacob Bull, Lasse Brautaset, Scandinavian Maritime law, The Norwegian Perspective 3d edition, p.36.

¹⁰⁰ Above 99, p.36.

¹⁰¹ Regulation (EC) No 593/2008 of The European Parliament and of The Council of 17 June 2008 on the law applicable to contractual obligation (Rome I), (hereafter Rome I Regulation).

¹⁰² Maria Hook; The choice of law agreement as a reason for exercising jurisdiction, I.C.L.Q. 2014, 63(4), 963-975, 2017 Cambridge University Press, Accessed September 12, 2017 Westlaw UK, Thomson Reuters., p.8.

¹⁰³ Above 101.

¹⁰⁴ CONVENTION ON THE LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS, opened for signature in Rome on 19 June 1980, (80/934/EEC). Accessed September 10, 2017, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A41980A0934>.

or more legal system or other legislative acts and their application or customs. The Rome I Regulation therefore facilitates the application of the law in situations where no agreement has been reached between the carrier and the consignor on the law applicable or is not at all included in the contract of carriage. In accordance with the second part of Article 1 of the Rome I Regulation, the obligations arising from exchange bills, checks, promissory notes or various negotiable instruments shall be excluded from the scope of the Regulation. In contrast, the bill of lading does not take into account the value of its negotiable instruments, but more attention is paid to its written evidence of the existence of a contract of carriage. In contractual relations, the parties usually decide which laws and rules will resolve disputes between themselves including which legal regime the contractual relationship shall be subject to.¹⁰⁵ Of course, in the contract of carriage, the parties are completely free to choose the appropriate law and process to resolve disputes, but there are certain conditions which, however, imposes an obligation to comply with the relevant provisions of the law. For example, claims as a mortgage, a maritime privilege or a lien are being processed by Latvian courts in accordance with the Latvian Marine Code.¹⁰⁶ A similar approach is also in Norwegian courts where its Maritime Code is applied "Norwegian court will apply paragraph 51 if question arises as to whether a maritime lien claim has priority ahead of a contract lien claim on a particular vessel – irrespective of whether the vessel is Norwegian or foreign."¹⁰⁷ Article 3 of the Rome I Regulation recognizes the principle of party autonomy - the right of the parties to enter into a legally binding agreement on the relevant legal system applicable in the contract.¹⁰⁸ The Regulation does not lay down any specific requirements regarding choice-of-law agreements, but recognizes that such requirements can be determined by the applicable national law. For instance, Article 3(5) of the Rome I Regulation stipulate "The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 10, 11 and 13." Where Article 11 establishes that a contract concluded between persons is formally valid if it meets the formal requirements of a law that regulates it in substance in accordance with this Regulation or the law of the State where it is concluded.¹⁰⁹ The principle of party autonomy entitles the parties to freely

¹⁰⁵ Supra note 99, p.37.

¹⁰⁶ Supra note 26, Maritime Code, Art.45, Applicable Law.

¹⁰⁷ Supra note 99, p.37.

¹⁰⁸ Michael Bogdan, Concise Introduction to EU Private International Law, Third Edition, p.119.

¹⁰⁹ Supra note 101, Art.3(5) and 11(1).

include in their contract of carriage a part of their national law. Consequently, if there is a dispute about that basis, then it shall be dealt with by the law of that country, this in itself does not mean that the claim must be settled by the courts of that State. For example, if a claim for damage to goods, loss or delay is required to arrest a ship on which a mortgage is registered in the Latvian Shipping Register, then this part of the claim is dealt with in accordance with the Latvian Maritime Code. Notwithstanding the above example, it would not be desirable to use the laws of different countries in cases of disputes, in particular, it applies to different legal systems like Common Law legal system and Continental Law (Civil law) system. If such a probability exists, the courts of different countries that are seized of the case may come to different conclusions. The courts can best enforce their rights, because the application of foreign law can lead to procedural inefficiencies and increase the risk of mistaken decisions. “As a consequence, the outcome of a case may well depend on where it is decided. A party in a dispute (or potential dispute) will therefore try to bring the matter before the most favourable jurisdiction”¹¹⁰ Courts who are not specialized in examining the requirements of the law of the sea can delay the process because they will need to invite specialists in this field. In which case one of the parties or both together could be suffering from the delay or unpredictability of this process. If, for some reason, the parties do not exercise the right of their autonomy to choose the applicable law for resolving disputes, then the Rome I Regulation contains guidance on what laws will deal with the dispute. It should be noted that the carriage of goods is regulated by various international conventions (Hamburg Rules, The Hague - Visby Rules, Rotterdam Rules, COGSA, etc.), which unify or harmonize substantive law, which makes the Rome I Regulation equally important and relevant for the carriage of goods.

With regard to transport contracts, the Rome I Regulation is devoted to Article 5, which is separated from Article 4 in relation to the applicable law if no choice has been made. Where the parties have not opted for the applicable law and, if the contract is not manifestly more closely connected with another country, the contract for the carriage of goods is governed by the national law of the place where the carrier is domiciled but only if the place of receipt of the goods or the place where the goods are supplied or the consignor's permanent place of stay is in the same country.¹¹¹ If the carrier and the consignor and the corresponding places of receipt do not coincide with the country in question, then the law of the country which is the place of delivery of the

¹¹⁰ Supra note 99, p.38.

¹¹¹ Supra note 101, Art.5(1).

goods must be applied.¹¹² If, however, for various reasons, when the parties have not chosen the appropriate law to resolve disputes and it is not possible to take advantage of paragraph 1 of Article 5 of the Rome I Regulation, then there is a probability of examining the case by law, which is manifestly more closely connected with country which is not mentioned in this paragraph.¹¹³ The close connection factor, the consideration of a case in another court, unlike the place of the event, can be assessed not only by the court itself to which the application is filed, but also by the representatives of the parties to justify the corresponding claim for compliance with a particular court. If the contract of carriage does not have the law chosen to deal with the dispute, then the law of the other countries with which the closest connection can be applied only in cases involving an illegal activity or an infringement of the right leading to civil legal liability.

Norwegian ships Irma and Mignon collided in English waters. The law applicable to English law is the place where the damage occurred. However, the Norwegian Supreme Court applied Norwegian law in the part of the decision, stated that "it is natural to use as a starting point the fact that a relationship should be primarily be determined according to the law of the country to which it has the strongest connection or where it most naturally belongs. And this particular situation should be considered as having the strongest connection to Norway, regardless of whether the collision took place in another country's territorial waters."¹¹⁴

If the applicable law is dependent on the court hearing it, it is important that the court most closely related to the dispute considers it.¹¹⁵ The application of the law in question, if not chosen, is closely linked to the jurisdiction of the court in which the case will be considered, since jurisdiction is an integral part of the procedural law.

5. Applicable jurisdiction in disputes concerning loss or damage of cargo or delay

The determination of jurisdiction in international trade in goods, as well as in international transport and other civil-law relations is one of the most important procedural rules of law. Similarly, to the applicable law for dispute resolution between parties, a similar approach is used

¹¹² Above, Article 5(1) of Rome I Regulation.

¹¹³ Supra note 101, Art.5(3).

¹¹⁴ Supra note 99, p.38.

¹¹⁵ Maria Hook; Supra note 102, p.4.

to choose a jurisdiction, which consists in determining the jurisdiction with the written agreement of the parties. However, if no jurisdiction has been chosen, the various laws mentioned above give an appropriate explanation of the place in which such a claim could be dealt with as to the loss, damage or delay of the cargo. Two important points for determining jurisdiction should be distinguished: the first if the applicable law chosen and the other, if no law is chosen. For example, if the Hamburg Rules are included in the contract of carriage as an international clause, then the plaintiff may, of his choice, bring an action before a court which, in accordance with the law of the State in which the court is located, has jurisdiction in one of the following places:

“(a) the principal place of business or, in the absence thereof, the habitual residence of the defendant; or (b) the place where the contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or (c) the port of loading or the port of discharge; or (d) any additional place designated for that purpose in the contract of carriage by sea.”¹¹⁶

In its turn, The Hague Visby Rules does not determine the applicable jurisdiction as the provisions of this Convention apply to the bill of lading, which in turn is a written statement of the transport contract, whether or not a jurisdiction clause is included. With regard to the carriage of goods, Article 163 of the Latvian Maritime Code establishes jurisdiction if the parties have not chosen it, a) on the basis of the location, or place of residence, of the defendant; or b) on the basis of the place where the carriage contract was entered into; or c) on the basis of the place the cargo is sent to; or d) on the basis of the place of delivery of the cargo.¹¹⁷ In turn, in accordance with Article 28, paragraph 6 of the Latvian Civil Procedure Law, the plaintiff may bring an action in the Maritime Claims on the place of the defendant's ship's arrest.¹¹⁸

In the case of maritime claims, regulatory enactments allow the parties to search for different courts and jurisdictions to file their claims, transferring the case from one court to another, so that a party could obtain the desired result from such activity, which is otherwise called "forum shopping". Forum shopping can be done by either the plaintiff, the defendant, or both parties. As can be seen from the Latvian Maritime Code, the claimant can lodge a claim not only to the court

¹¹⁶ Supra note 27, Article 21(1), Jurisdiction.

¹¹⁷ Supra note 26, Maritime Code, Art.163, Jurisdiction of Claims.

¹¹⁸ The Latvian Civil Procedure Law (Latvijas Civilprocesa likums), Article 28 (6), jurisdiction of the plaintiff's choice.

where the defendant is located but to another forum based on the location of the transport contract or the place of unloading or loading of the goods.

If, however, no jurisdiction has been chosen, nor can it be deduced from the applicable law, or if it is not chosen, then in accordance with the EU Regulation No 1215/2012 on jurisdiction and recognition and enforcement of judgments in civil and commercial matters (Hereafter Brussels I Regulation).¹¹⁹ The Brussels I Regulation superseded the previous 1968 Brussels Convention, which was applied to on jurisdiction and enforcement of judgments in civil and commercial matters.¹²⁰ Brussels I regulation, just like the Latvian Maritime Code and the Hamburg Rules, have a number of options for choosing jurisdiction based on the main principles and ending with an exclusive forum.

There are often situations where there are multiple claimants and one or more defendants in the maritime claims for the carriage of goods. In case C-406/92 the owners of the cargo lately laden on board the ship "Tatry" versus the owners of the ship "Maciej Rataj"¹²¹ In this case there are three groups of cargo owners as well as some shipowners with ships "Tatry" and "Maciej Rataj". Various actions were commenced in courts in the Netherlands and the United Kingdom by the various cargo owners and the shipowners. The claims brought by cargo owners in these courts were both common and separate from each other. Claims submitted to the court were requested to reimburse damages for damaged goods and arrest the vessels for satisfaction of the claim. The defendants ask the court to declare that they are not liable or are not fully responsible for the possible contamination of the goods (cargo of soya bean oil was contaminated with diesel or other hydrocarbons). In this complicated case, the courts, however, began to take legal action, also rejected the admissibility of the case, and also stay proceedings. Both sides in each proceeding tried to dismiss proceedings based on the absence of jurisdiction in accordance with Article 21 of the Brussels Convention (*Where proceedings involving the same cause of action and between the*

¹¹⁹ EU Regulation No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and recognition and enforcement of judgments in civil and commercial matters (recast).

¹²⁰ 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters. Acceded September 20, 2017 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A41968A0927%2801%29>.

¹²¹ Case -406/92, The owners of the cargo lately laden on board the ship "Tatry" v the owners of the ship "Maciej Rataj", REFERENCE to the Court under the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters by the Court of Appeal for a preliminary ruling in the proceedings pending before that court between. Acceded April 12, 2017, <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c-406/92&td=ALL#>.

*same parties are brought in the courts of different Contracting States, any court other than the court first seised shall of its own motion decline jurisdiction in favour of that court.*¹²²). That case shows how difficult it may be to initiate proceedings before a court which would be more favorable to the applicant, provided that another plaintiff has already begun a similar proceeding in another court. On the basis of Article 21 of the Brussels Convention, the court could reject an application on grounds of lack of jurisdiction of this court. But the applicants in this case tried to show that their claims against the same defendant were not similar to an action brought before another court. Therefore, this requirement should not be refused on the basis of Articles 21 and 22 of the Brussels Convention.

The Brussels I Regulation sets nearly all possible options in which court the applicant (the party to the contract of carriage or the successor in title) can bring an action against the defendant. Of course, the Brussels I Regulation applies to parties where at least one of the participants is related with a Member State. Consequently, the party to the contract of carriage has the right to claim damages for damage, delay or loss of the goods and, in accordance with Article 4 (Article 2 of Brussels Convention) of the Brussels I Regulation, to bring an action before the court of the Member State in which that person is domiciled.¹²³ As can be seen from the legal certainty of Article 4 of the Brussels I Regulation, then the jurisdiction of the forum is determined similarly to that of laws of the Member States. On the other hand, the plaintiff, when claiming to the court, wants to satisfy the claim in his favour, so he is ready to find the best possible jurisdiction for his claim (*forum conveniens*) and the court to see the case in a manner that is understandable to him, with an expected legal outcome, similar to that of his own national court. The Brussels I Regulation supports the principle of forum shopping and allows the plaintiff to choose the appropriate court to make a claim different from that of Article 4 of this regulation. The Brussels I Regulation highlights a number of jurisdictions such as special jurisdiction or exclusive jurisdiction or even explicit choice of forum. Special jurisdiction is governed by Article 7 of the Brussels I Regulation, but for the transport of goods in disputes concerning loss or damage of cargo or delay, the provisions of the first and second paragraphs should apply. A person domiciled in a Member State may be sued in another Member State in matters relating to the performance of a contractual

¹²² Supra note 120, Article 21, *Lis Pendens* - related actions.

¹²³ Supra note 119, Article 4(1), General provision.

obligation in a particular place.¹²⁴ Unless otherwise specified, jurisdiction shall be determined in the case of the sale of goods in the place designated by the contract, or service transactions in the place where the respective service is provided under the contract.¹²⁵ In cases involving tort, delict or quasi-delict, the court of the Member State where the harmful event occurred or may occur.¹²⁶ As can be seen from the provisions of Article 7 of the Brussels I Regulation, the applicant has the right to a special jurisdiction which, if not seemingly, then is significantly different from Article 4. Special jurisdiction rules are derogations from the main rule to be interpreted and applied prudently.

“It is also important to note that jurisdiction pursuant to Article 7 is sometimes based on disputed facts that are relevant not only for jurisdiction but also for the substance of the claim, for example the applicant may invoke the defendant's tort both for the purposes of jurisdiction pursuant to Article 7(2) and for his compensation claims pursuant to the applicable substantive law. According to the ECJ, the court does not, in such situations, have to conduct a comprehensive taking of evidence in the jurisdictional context and can in principle assume that the facts presented by the plaintiff are correct, even though it must take into account all the information available, including the allegations made by the defendant.”¹²⁷

The parties to the transport contract may agree to grant exclusive jurisdiction to the court or the courts of the Member State to settle any disputes which have arisen or which may arise in connection with a particular legal relationship.¹²⁸ In order to grant this exemption under Article 25 of the Brussels I Regulation, one or both parties must be domiciled in the Member State, and the agreement must be expressed in writing, but if it is oral, then the testimony must be in writing. With regard to the expression of the will to choose the jurisdiction of the courts, the parties must understand their choice with the legal consequences that would arise if one party does not want to be involved in the court proceedings in the particular jurisdiction. A derogation from the exclusive jurisdiction clause in a contract for the carriage of goods is not permissible. The introduction of such a clause in a contract of carriage or other written evidence is a separate agreement between

¹²⁴Supra note 119, Article 7(1)(a).

¹²⁵ Above, Article 7(1)(b).

¹²⁶ Supra note 119, Article 7(2).

¹²⁷ Supra note 108, p.43.

¹²⁸ Supra note 119, Article 25(1).

the parties expressed by the parties' desire to resolve disputes that might arise in a particular court or courts in the territory of one Member State. As already stated above, the bill of lading is a written statement of the contract of carriage. Consequently, it would correspond to the written evidence set out in Article 25, first paragraph, point (a) of the Brussels I Regulation (...[o]r evidenced in writing).¹²⁹ The jurisdiction clause contained in the bill of lading can be regarded as equivalent to a written agreement within the meaning of Article 17 of the Brussels Convention, if it the rules are clear, precise and unambiguous.¹³⁰ If the contract for the carriage of goods is challenged or invalidated, the exclusive jurisdiction shall remain in force except if it is contested. "The validity of the choice-of-court clause does not depend on the validity of the contract as a whole, so that such a clause can be valid even if the contract as a whole is not."¹³¹ An agreement conferring jurisdiction which forms part of a contract is to be considered an agreement that is independent of other terms of the contract.¹³²

In case C-387/98 (Reference for a preliminary ruling: Hoge Raad der Nederlanden - Netherlands. Coreck Maritime GmbH v Handelsveem BV and Others) The European Court of Justice ruled in its judgment that the purpose of the Brussels Convention is to protect the wishes of the parties involved, it must be construed in a manner consistent with those wishes where they are established and accordingly Article 17 is based on the recognition of the independent will of the parties to the contract, in deciding which courts to have jurisdiction to settle disputes covered by Brussels Convention.¹³³ In this case, the ECJ clearly interpreted the term "have agreed" in the first paragraph of Article 17 of the Brussels Convention and expressed it as "It is sufficient that the clause state the objective factors on the basis of which the parties have agreed to choose a court or the courts to which they wish to submit disputes which have arisen or which may arise between them".¹³⁴ The meaning and meaning of Article 17 of the Brussels Convention has been transposed to Article 25 of the Brussels I Regulation. The meaning and meaning of Article 17 of the Brussels Convention has been transferred to Article 25 of the Brussels I Regulation, so that the ECJ's

¹²⁹129 Above, Article 25(1)(a).

¹³⁰ Supra note 96, Case C-71/83, Observations of the Italian Government.

¹³¹ Supra note 108, p.64.

¹³² Supra note 119, Article 25(5).

¹³³ Case C-387/98, Judgment of the Court (Fifth Chamber) of 9 November 2000. Coreck Maritime GmbH v Handelsveem BV and Others. Reference for a preliminary ruling: Hoge Raad der Nederlanden - Netherlands. Brussels Convention - Article 17 - Clause conferring jurisdiction - Formal conditions - Effects. Acceded 18 May, 2017, <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-387/98&td=ALL>.

¹³⁴ Above, Case C-387/98 paragraph 15.

preliminary ruling in Case C-387/98 is to be taken into account in the subsequent cases arising from the application of the Brussels I Regulation.

Persons wishing to enter into a purely exclusive agreement, i.e., exclude jurisdiction of the courts of one or more Member States may also be invoked in Article 25, without indicating the court having jurisdiction.¹³⁵ Thus, the parties to the contract clause on the chosen jurisdiction may indicate a specific court or court which will not deal with a dispute that might arise under certain circumstances. In such circumstances, by excluding certain courts from resolving disputes, the parties may refrain from nominating a specific court, but leave several alternative courts in place that could resolve the dispute and leave the final choice behind the plaintiff in particular, by agreeing that all disputes will be settled by the court in which the defendant is domiciled.¹³⁶ The jurisdiction agreement expressed in Article 25 of the Brussels I Regulation is the intention of the two parties to further disputes in the particular court and that the choice of court agreement is applicable only between the parties who have concluded it. Consequently, the arrangement between the carrier and the consignor is not applicable to charterers, time charterers, voyage charterers, performing party¹³⁷, assignees, etc., but is an exception to prorogation clauses in negotiable instruments, such as bill of lading.¹³⁸ Article 25 (1) of the Brussels I Regulation contains detailed provisions on the required choice of court agreement, which offers three options. The first option that assigns jurisdiction is to be in writing or evidence in writing (Article 25(1)(a)). The second option recognizes the form that corresponds to the established practice of the parties that they have established between themselves (Article 25(1)(b)). The third option is possible in international trade or trade in a form that corresponds to its use in a particular trade which the parties know or ought to have known that such use is well known and commonly used in the trade area of the contracting parties (Article 25(1)(c)).

If the defendant commences his appearance without contesting the jurisdiction, he is deemed to have given his consent to jurisdiction. Such "Tacit prorogation" is recognized by Article 26 of the Brussels I Regulation. There is no significant difference in whether the defendant's conduct is related to the recognition of his or her alleged jurisdiction or the lack of knowledge of the

¹³⁵ Supra note 108, p.63.

¹³⁶ Above 131, p.63.

¹³⁷ Supra note 1, Rotterdam Rules, Art.1(6)(a).

¹³⁸ Supra note 108, p.65.

applicable rules of jurisdiction, but in the weak party disputes in which the weak party is the defendant, the court must, before agreeing with the jurisdiction, ensure that the defendant is informed their right to challenge jurisdiction even when they come to court¹³⁹. In the contract of carriage of goods, the weak side is either the consignor or the consignee. Consequently, if the bill of lading is issued from the carrier and contains a jurisdiction clause in favor of the carrier¹⁴⁰, the holder of the bill of lading or the consignee, on the basis of the first paragraph of Article 26 of the Brussels I Regulation, either to agree to or to challenge that jurisdiction. In any case, the court should allow the weaker party to establish his or her right to the jurisdiction or challenge it, otherwise this judgment would be open to challenge.

The maritime claims related to the carriage of goods are of great concern to the jurisdiction, since a negligent approach to this issue may lead to legally unpredictable consequences for one or the other party. Corresponding international and national laws and regulations make it easier for parties to choose the appropriate jurisdiction to defend their rights. However, the choice of the appropriate jurisdiction to deal with a particular dispute is not an easy task, since the international carriage of goods and trade involves parties from different judicial systems and traditions. Notwithstanding all the complications, international regulations, although slowly, but still adapting to the traditions of modern commerce including the carriage of goods by sea, thus facilitating their understanding and use.

6. Conclusion

International merchandise trade is a multifunctional complex that ensures the transfer of goods from the manufacturer to the end consumer, including a range of different actors that ensure the continuity of this process without damaging the original value of the product. One of the major players in international freight transport, which was also dedicated to this master thesis, is those involved in the carriage of sea transport. The legal relations of these persons are regulated by relevant international and national laws and regulations, as well as in individual cases, court rulings, such as preliminary rulings by the European Court of Justice¹⁴¹.

¹³⁹ Bogdan, supra note 108. p.65.

¹⁴⁰ Supra note 96, Case C-71/83.

¹⁴¹ Case C-71/83; Case -39/02; Case C-387/98.

Of course, relations between the parties are also governed by customs(usages), and the reference to it is even laid down in Article 25, first paragraph, point (c) of the Brussels I Regulation, but no attention was paid to this scientific work.

The thesis is put forward in the master's thesis - who has the right to claim damages if one of the related parties are located on the vessel. Claims for damages, damage to or loss of or delay to goods are the responsibility of the defendant, which in itself is understandable. Finding the defendant is a complicated matter, because it is sought between two separate contracts and various contracting parties with different responsibilities and rights. One of the contracts is an international sales contract, and the other is an international contract of carriage of goods. In the contract for the sale of goods, the parties are usually the same parties as in the contract of carriage, with the essential exception that the carrier of goods is the main participant in the carriage contract and the roles of the other parties have been changed. The master thesis focuses on the transfer of goods from the seller to the buyer, in such a way that the original structure of the product does not change, but its owner and location change. At this long chain stage the liability lies with the holder of the goods from the moment the goods are placed at his disposal and he has undertaken to hand over intact goods to the next holder or legal owner. The transfer of goods risks from the seller to the buyer is determined by including specific international rules in the terms of the sales contract, such as CISG¹⁴² or Incoterms 2010¹⁴³. On the other hand, the risk of a commodity, the transfer from the seller, which is actually the consignor, to the carrier is determined by including specific international rules such as The Hague-Visby Rules, Rotterdam Rules, Hamburg Rules or national law in the contract for the carriage of goods. Thus, the plaintiff, if he has a claim for damages or loss or delay, can sue the defendant who was responsible for the goods at the time of the occurrence. In its turn, the defendant, if it is the carrier, can bring an action against the shipper for failure to provide the relevant information about the peculiarities of the cargo transportation that caused it to be damaged.

Much attention was paid to the specifics of the contract for the carriage of goods, concluded on the basis of specific international regulatory enactments, and in keeping with the principle of party autonomy, as well as incorporating several clauses, which in themselves

¹⁴² Supra note 4.

¹⁴³ Supra note 1.

constitute separate agreements and are considered as independent treaties. The components of this contract of carriage are intended for events that could occur if the contract was breached or loss of goods or damage or delay in case. These contractual clauses include arbitration options for dispute resolution or use of applicable law and / or relevant jurisdiction.

Much attention was devoted to the bill of lading, which is a written evidence of the contract of carriage for its existence. The essence of the bill of lading has been researched in several scientific papers and has been examined in innumerable court proceedings without thereby defining its unambiguousness and uniqueness, as demonstrated by the diversity of views expressed by national representatives in the case C-71/83 and C-387/98. One is clear that the uniqueness of the bill of lading changes from the nature of the parties' legal relationships.

The final part of the Master's thesis was focused on the peculiarities of reviewing legal disputes and, accordingly, on applicable law or jurisdiction. Maritime claims related to the carriage of goods the proper use of law or jurisdiction is essential to resolving disputes. In relations involving sea freight, the parties have the right to freely choose the jurisdiction in which a dispute could be dealt with by relevant international or national law. On the other hand, if such a choice has not been used, the dispute shall be settled in accordance with the law of the country in which jurisdiction is determined in accordance with the provisions of the Brussels I Regulation. Lack of jurisdiction or the choice of law will almost always create a situation where parties, in accordance with international regulations, will have an interest in contesting jurisdiction. In this way, it creates unreasonably long judicial processes and unpredictable consequences. And everything at last in the field of international freight transport by sea the countries concerned should improve their existing international rules and maximize the adaptation of their national legislation to make it easier for parties involved in transport transactions to understand international regulations.

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